MAA CREDIT BHD v. ALAM PAHLAWAN SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
SU TIANG JOO J
[ORIGINATING SUMMONS NO: WA-24FC-1377-09-2024]
15 MAY 2025

Abstract – *The Moneylenders Act 1951 ('MLA') is a special and specific Act for the regulation and control of the business of moneylending not only for the protection of borrowers but also matters connected therewith. A licensed moneylender's demand for an amount computed in breach of the statutory formula prescribed by s. 17 of the Moneylenders Act 1951, amounts to a cause to the contrary so as to disentitle the moneylender to an order for sale of the property charged to the moneylender as security.*

MONEYLENDERS: *Interest – Charging of interest under loan agreement – Loan secured by charge over land – Application for order for sale upon default on repayment of loan – Computation of interest – Whether provision of statutory formula under s. 17(1) of Moneylenders Act 1951 to be strictly complied with – Whether imposition of interest contravened statutory formula – Whether lender charged interest in excess of what was entitled – Whether demand in excess of statutory formula amounted to cause to contrary*

LAND LAW: *Order for sale – Application for – Loan secured by charge over land – Application for order for sale upon default on repayment of loan – Computation of interest – Whether provision of statutory formula under s. 17(1) of Moneylenders Act 1951 to be strictly complied with – Whether imposition of interest contravened statutory formula – Whether lender charged interest in excess of what was entitled – Whether demand in excess of statutory formula amounted to cause to contrary under s. 256(3) of National Land Code*

The plaintiff, a licensed moneylender, had given a loan to Best Birdsnest Sdn Bhd ('principal borrower'), in terms contained in a moneylending agreement ('agreement'). One of the securities given by the defendant for the loan was a third-party first legal charge over its land ('charge'). The parties agreed, amongst others, that the expiry of the duration of repayment was 16 December 2021 and that as at that date, the amount owing was RM25,526,986.30, which was made up of the principal sum plus interest thereon at 10% per annum from 16 July 2021 until 16 December 2021. Upon the principal borrower's default in the repayment of the loan by 16 December 2021, the plaintiff sued the principal borrower and its guarantors ('Suit 183'). After the commencement of Suit 183, the principal borrower paid a sum of RM200,000 only, which was utilised to pay part of

A the amount owing and, as of 23 May 2023, the plaintiff asserted that the amount owing was RM31,776,003.47. The plaintiff subsequently obtained summary judgment in Suit 183 against the principal borrower and its guarantors, whilst the counterclaim of the principal borrower and its guarantors were struck out. The judgment in Suit 183 remained unsatisfied
B and there were pending appeals at the Court of Appeal against the judgment in Suit 183. In addition to Suit 183, the plaintiff made demands upon the defendant, the third-party chargor who was not a party in Suit 183, to make payment and asserted that, as of 4 June 2024, the amount alleged to be owing was RM36,435,437.07. Not getting payment as demanded, the plaintiff thus
C issued a statutory demand in Form 16D pursuant to s. 254 of the National Land Code ('NLC') and subsequently, filed an action pursuant to ss. 256 and 257 of the NLC seeking an order for sale of the land *via* public auction ('encl. 1') to satisfy the monies allegedly owing to the plaintiff under the charge. The defendant applied to strike out the application ('encl. 5') on the
D grounds, *inter alia*, that the plaintiff's computation of the amount owing was in breach of the Moneylenders Act 1951 ('MLA') and this amounted to cause to the contrary as to disentitle the plaintiff to an order for sale.

Held (dismissing encl. 1 and striking out encl. 5):

(1) The plaintiff may simultaneously pursue all remedies to recover monies
E lent by it. Suit 183 and the appeals against the judgment it obtained in Suit 183 were irrelevant to this action. Therefore, the application by the defendant to stay this action pending the disposal of the appeals against the judgment obtained in Suit 183 against the principal borrower and its guarantors, of which the defendant was not even a party, was without
F merit. (paras 28 & 29)

(2) The MLA is a special and specific Act of Parliament to regulate and control the business of moneylending, not only for the protection of borrowers, but also matters connected therewith. The phrase 'matters connected therewith' is wide enough to cover the dispute herein on the
G calculation of interest payable under the charge, created in favour of the plaintiff to secure a moneylending loan. The provisions of s. 17(1) of the MLA provides on how interest on the unpaid sum is to be calculated. (paras 43 & 44)

(3) The proviso to s. 17(1) of the MLA provides that the plaintiff shall be
H entitled to charge 8% per annum on the unpaid sum or instalment, which in this case, as at 16 December 2021, was RM25,526,986.30 which included the interest at 10% per annum on the principal sum from 16 July 2021 until 16 December 2021 amounting to RM1,026,986.30. Even though this amounted to compound interest, this was expressly
I permitted by the last part of the proviso which provided that any interest so charged shall not be reckoned for the purposes of the MLA as part

of the interest charged in respect of the loan. Further, cl. 2 of the agreement read together with s. 17(1) of the MLA, made it clear that the cut-off date for the imposition of the interest at 10% per annum on the principal sum or loan with a tenure of five months, was 16 December 2021. However, in contravention of the explicit provision of s. 17(1) of the MLA and cl. 2 of the agreement, the plaintiff continued to charge interest at 10% per annum on the principal sum after 16 December 2021 and continuing. (paras 45 & 47)

(4) To allow the 10% per annum interest to continue to accrue plus a default interest of 8% per annum being levied would result in the defendant being charged interest in excess of what the plaintiff was entitled to, in contravention of the statutory formula provided in s. 17(1) of the MLA. By computing interest in the manner it had, in law, the defendant had proven that there was in existence cause to the contrary under two of the three categories laid down in *Low Lee Lian v. Ban Hin Lee Bank Bhd*, namely: (i) that the statutory demand in Form 16D demanded sums not lawfully due from the chargee; and (ii) to grant an order for sale would be contrary to some rule of law, namely the MLA and, in particular, s. 17(1) of the MLA. Enclosure 1 was thus dismissed with liberty to the plaintiff to apply afresh premised upon the computation of the amount owing in compliance with the provisions of the MLA. (paras 49, 51 & 54)

Obiter

(1) An originating summons for an order for sale is meant to be speedy and summary in nature. Thus, there is no necessity to file an application to have it struck out when the same issues would be canvassed and, if the defendant succeeds, the originating summons would be dismissed. To file a striking out application would merely duplicate efforts resulting in the court having to peruse and consider similar materials to determine similar issues This is unproductive and is to be discouraged. (paras 23 & 24)

Case(s) referred to:

Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***

Cempaka Finance Bhd v. Ho Lai Ying & Anor [2006] 3 CLJ 544 FC ***(dist)***

CIMB Islamic Bank Berhad v. David Chua Kok Tee [2022] CLJU 618; [2022] 1 LNS 618 HC ***(dist)***

Dr Lourdes Dava Raj Curuz Durai Raj v. Dr Milton Lum Siew Wah & Anor [2020] 9 CLJ 192 FC ***(refd)***

Hap Seng Credit Sdn Bhd v Rentak Arena (M) Sdn Bhd [2017] CLJU 1; [2017] 1 LNS 1 HC ***(dist)***

Jigarlal K Doshi v. Resolution Alliance Sdn Bhd & Another Appeal [2012] CLJU 811; [2012] 1 LNS 811 CA ***(dist)***

Low Lee Lian v. Ban Hin Lee Bank Bhd [1997] 2 CLJ 36 SC ***(refd)***

Thameez Nisha Hasseem v. Maybank Allied Bank Bhd [2023] 5 CLJ 874 FC ***(refd)***

Legislation referred to:
Moneylenders (Control and Licensing) Regulations 2003, Schedule 10(1)
Moneylenders Act 1951, ss. 17(1), 17A(1), 19(3)
National Land Code, ss. 254(1), 256(3), 257
Rules of Court 2012, O. 7 r. 3, O. 14 r. 1, O. 18 r. 19(1)(a), (b), (c), (d), O. 83

For the plaintiff - Teoh Chye Yi & Cheong Tick Soon; M/s Raja, Darryl & Loh
For the defendant - Eldarius Yong Zhen Jie & Felix Sam Sze Jia (PDK); M/s Ting & Yong

Reported by S Barathi

JUDGMENT
(encls. 1 and 5)

Su Tiang Joo J:

Introduction

[1] In seeking to enforce a third party charge over a piece of property, the plaintiff, a licensed moneylender, applied ('encl. 1') for an order for sale of the property alleging that the defendant/third party chargor, has failed to comply with its statutory demand for payment. The defendant applied to strike out the application ('encl. 5'). Asserting that it has raised a novel point which has not been decided before, namely that, the plaintiff's computation of the amount owing is in breach of the Moneylenders Act 1951 (Revised 1989) ("MLA 1951") and this amounts to cause to the contrary as to disentitle the plaintiff to an order for sale.

[2] After hearing parties, this court found that the statutory demand made in Form 16D pursuant to s. 254(1) of the National Land Code ("NLC") was in contravention of s. 17(1) of the MLA 1951 and, that this amounts to cause to the contrary pursuant to s. 256(3) of the NLC, and had dismissed the application (encl. 1) with costs and with liberty to the plaintiff to apply afresh premised upon the computation of the amount owing in accordance with the MLA 1951. Upon the dismissal of encl. 1, the defendant withdrew encl. 5 and it was struck out. Dissatisfied, the plaintiff has appealed, and these are the full grounds of judgment.

Parties

[3] The plaintiff is a licensed moneylender under the MLA 1951.

[4] The defendant is a private limited company with a company registration number, No. Syarikat: 198901009519 (186820-M).

Background Facts

[5] The plaintiff has given a loan (the "said loan") to a private company, Best Birdsnest Sdn Bhd ("principal borrower").

[6] The terms of the said loan are contained in a moneylending agreement carrying the title, Schedule K of the Moneylenders (Control and Licensing) Regulations 2003 (Subregulation 10(1)) Moneylending Agreement (Secured Loan) made on 13 July 2021 (encl. 2 pp. 11 to 18) (the "said MLA").

[7] The material terms set out in the First Schedule to the said MLA (encl. 2 pp. 15) are:

(i) the principal sum of the loan is RM24,500,000 (the "principal sum");

(ii) interest rate is at ten per centum (10%) per annum;

(iii) duration of repayment of the loan is five months from the date of disbursement of the principal sum, which was 16 July 2021 (encl. 2 para. 6);

(iv) repayment is to be *via* only one (single) instalment; and

(v) the principal sum and the total accrued interest or any balance thereof shall be repaid in full immediately upon expiry of the duration of repayment and shall be repaid together with any charges that may be outstanding on the account.

[8] Clause 2 of the MLA (encl. 2 p 11) provides that:

> (1) **If default is made** in the repayment upon the due date of any sum of instalment payable to the lender under this agreement, whether in respect of principal or interest, **the lender shall be entitled to charge simple interest on the unpaid sum of instalment which shall be calculated at the rate of eight per centum per annum** from day to day from the date of default in repayment of the sum of instalment until that sum of instalment is paid, and any interest so charged shall not be reckoned for the purposes of this agreement as part of the interest charged in respect of the loan.
>
> (2) The interest shall be calculated in accordance with the following formula:
>
> R = 8/100 x D/365 x S
>
> where
>
> R represents sum of interest to be paid.
>
> D represents the number of days in default.
>
> S represents the sum of monthly instalment which is overdue.
>
> (emphasis added)

[9] One of the securities given for the said loan is that the defendant has given a third-party first legal charge under Presentation of Charge No. PDSC 15537/2022 (the "said charge") over its land held under HS (D) 37724 PT 183 Seksyen 48 Bandar Kuala Lumpur, Daerah Kuala Lumpur (the "said land") valued at RM110,220,819 (encl. 2 p 17).

[10] Both the plaintiff and the defendant agree in their respective affidavits filed, that the expiry of the duration of repayment was 16 December 2021 and that as of 16 December 2021, the amount owing is RM25,526,986.30 (encl. 2 para. 8 and encl. 6 para. 11.4). This amount is made up of the principal sum plus interest thereon at 10% per annum from 16 July 2021 until 16 December 2021.

[11] As it turned out, the principal borrower failed to repay the said loan by 16 December 2021 and continued to default in repayment despite repeated demands (encl. 2 paras. 8 and 9). This caused the plaintiff to sue the principal borrower and its guarantors *vide* Kuala Lumpur High Court Civil Suit No. WA-22NCC-183-04/2023 ("Suit 183").

[12] After the commencement of Suit 183, the principal borrower paid a sum of RM200,000 only which was utilised to pay part of the amount owing and as of 23 May 2023, the plaintiff asserts the amount owing is RM31,776,003.47 (encl. 2 para 13).

[13] On 8 December 2023, the plaintiff obtained summary judgment in Suit 183 pursuant to O. 14 r. 1 of the Rules of Court 2012 ("ROC") against the principal borrower and its guarantors as follows (encl. 2 p 83):

(i) a sum of RM31,776,003.47 as of 23 May 2023;

(ii) interest on RM24,500,000 at 10% per annum from 24 May 2023 until full realisation;

(iii) interest on RM25,526,985.30 at 8% per annum from 24 May 2023 until full realisation; and

(iv) costs of RM2,000 to be paid by the principal borrower and two of its guarantors and costs of RM1,000 to be paid by its third guarantor.

[14] Besides the summary judgment, the learned judge in Suit 183 had struck out the counterclaim of the principal borrower and its guarantors. The defendant in this action is not a party in Suit 183 and if the plaintiff had wanted for the defendant to be bound by it, it ought to have added the defendant herein as a party to Suit 183, but it did not. See *Dr Lourdes Dava Raj Curuz Durai Raj v. Dr Milton Lum Siew Wah & Anor* [2020] 9 CLJ 192 at para. 38.

[15] The judgment in Suit 183 remains unsatisfied, and I was informed by learned counsel for both the plaintiff and the defendant that there are pending appeals to the Court of Appeal against the judgment given in Suit 183.

Enforcement Of The Said Charge

[16] In addition to Suit 183, the plaintiff made demands through its solicitors *vide* letters dated 28 December 2022, 21 March 2023 and 4 June 2024, upon the defendant to make payment, and asserting that as at 4 June 2024 the amount alleged to be owing is RM36,435,437.07 (encl. 2 para.16 and pp. 88, 90, 91, 93 and 94).

[17] Not getting payment as demanded, the plaintiff issued a statutory demand in Form 16D pursuant to s. 254 of the NLC. Section 254 NLC provides as follows:

> (1) Where, in the case of any charge, any such breach of agreement as is mentioned in subsection 253(1) has been continued fora period of at least one month or such alternative period as may be specified in the charge which shall not be less than one month, *the chargee may serve on the chargor a notice in Form 16D:*
>
> *(a) specifying the breach in question;*
>
> *(b) requiring it to be remedied within one month of the date on which the notice is served, or such alternative period as may be specified in the charge which shall not be less than one month; and*
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> *(c) warning the chargor that, if the notice is not complied with, he will take proceedings to obtain an order for sale.*
>
> (2) Where, after the service of any such notice, the charged land or lease becomes vested in any other person or body, the notice shall be as valid and effectual against that person or body as it was against the person or body on whom it was served.
>
> (3) If at the expiry of the period specified in any such notice the breach in question has not been remedied:
>
> (a) the whole sum secured by the charge shall (if it has not already done so) become due and payable to the charge; and
>
> (b) the chargee may apply for an order for sale in accordance with the following provisions of this Chapter:
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> Provided that paragraph (a) shall not apply to any charge to secure the payment of an annuity or other periodic sum.
>
> (emphasis added)

[18] The Form 16D issued by the plaintiff dated 26 July 2024 and served upon the defendant in essence asserted that the defendant has committed a breach of the said charge by failing to pay on demand the principal sum and all monies including amongst other things, interest, commission, commitment fee, charges and costs outstanding or payable by the principal borrower and failing to comply with the aforesaid letters of demand of 28 December 2022, 21 March 2023 and 4 June 2024. These letters of demand were annexed to the statutory demand in Form 16D (encl. 2 pp. 96 to 108).

[19] Upon receipt of the Form 16D, the defendant wrote to the plaintiff's solicitors *vide* letter dated 13 August 2024 to refrain from applying for an order for sale pending the appeals against the judgment obtained in Suit 183 (encl. 2 p. 126). The plaintiff disagreed and through its solicitors replied *via* its solicitors on 27 August 2024 that the pending appeals are irrelevant (encl. 2 p. 128).

[20] The defendant wrote another letter dated 2 September 2024 to the plaintiff's solicitors asserting that the appeals are relevant to the plaintiff's enforcement of the said charge but if the plaintiff proceeds to file an application for an order for sale, it shall engage a legal counsel and take the necessary action (encl. 2 p. 127).

[21] On 24 September 2024, the plaintiff filed this action *vide* the originating summons (encl. 1) pursuant to ss. 256 and 257 of the NLC seeking an order for the sale of the said land *via* public auction to satisfy monies allegedly owing to the plaintiff under the said charge and various other consequential reliefs. In response, the defendant filed an application on 16 October 2024, to have the originating summons struck out pursuant to O. 18 r. 19(1)(a), (b), (c) and (d) of the ROC (encl. 5).

Procedural Caution

[22] From my perusal of the affidavits affirmed for the plaintiff and the defendant for both encls. 1 and 5, I found that the same materials are being relied upon by the plaintiff to seek an order for sale, and by the defendant to both resist encl. 1 and to have it struck out. I had, thus, at the first case management date of 17 October 2024 directed that both encls. 1 and 5 are to be heard together.

[23] In my considered view, an originating summons for an order for sale is meant to be speedy and summary in nature, see *Low Lee Lian v. Ban Hin Lee Bank Bhd* [1997] 2 CLJ 36 at p. 51 para. a. Thus, there is no necessity to file an application to have it struck out when the same issues would be canvassed and if the defendant succeeds, the originating summons would be dismissed.

[24] To file a striking out application would merely duplicate efforts resulting in the court having to peruse and consider similar materials to determine similar issues. It is the flip side of the same coin. This is unproductive and is to be discouraged.

Law On The Enforcement Of A Charge

[25] Section 256 of the NLC provides as follows:

(1) This section applies to land held under:

(a) Registry title;

(b) the form of qualified title corresponding to Registry title; or

(c) subsidiary title,

and to the whole of any undivided share in, or any lease of, any such land.

(2) Any application for an order for sale under this Chapter by a chargee of any such land or lease shall be made to the Court in accordance with the provisions in that behalf of any law for the time being in force relating to civil procedure.

(3) On any such application, the Court shall order the sale of the land or lease to which the charge relates unless it is satisfied of the existence of cause to the contrary.

[26] It is undisputed that the said land is held under a Registry title and thus, pursuant to s. 256(3) of the NLC, this court shall order the sale of the said land to which the said charge relates unless this court is satisfied of the existence of cause to the contrary.

[27] What amounts to "the existence of cause to the contrary" has been settled by the Supreme Court in *Low Lee Lian* (*supra*) where Gopal Sri Ram JCA (later FCJ) speaking for the Supreme Court held as follows:

The critical phrase in sub-section (3) of s. 256 to which we have lent emphasis, despite having been the subject of judicial pronouncements, continues to demand the attention of Courts. There is no doubt that, upon a plain reading of the sub-section, a High Court is entitled to refuse an order for sale of charged property once it is satisfied of the existence of cause to the contrary. But the question then arises: what is meant by "cause to the contrary"?

In our judgment, cause to the contrary within s. 256(3) may be established only in three categories of cases.

First, it may be taken as settled that a chargor who is able to bring his case within any of the exceptions to the indefeasibility doctrine housed in section 340 of the Code establishes cause to the contrary.

...

...

Secondly, a chargor may show cause to the contrary within s. 256(3) of the Code by demonstrating that the chargee has failed to meet the conditions precedent for the making of an application for an order for sale. For example, failure on the part of the chargee to prove the making of a demand or service upon the chargor of a notice in Form 16D would constitute cause to the contrary. So too, where the notice demands sums not lawfully due from the chargee. See, Co-operative Central Bank Ltd. v. Meng Kuang Properties Bhd. [1991] 2 CLJ 1144; [1991] 2 MLJ 283. However, in such a case, it would be open to the chargee to subsequently serve a notice or a proper notice fas the case may be) before commencing proceedings afresh as the cause shown to the contrary does not in substance affect the chargee's right to apply for an order for sale.

Thirdly, a chargor may defeat an application for an order for sale bv demonstrating that its grant would be contrary to some rule of law or equity.

...

...

A *A Judge hearing an application under s. 256 must bear in mind that the procedure under the section is meant to be speedy and summary in nature. He is first concerned with whether the chargee has given the appropriate statutory notices as stipulated in the Code. Next, he must ensure that the procedural requirements prescribed by O. 83 of the Rules of the High Court 1980 have been complied with. Next, he is concerned with the very narrow question whether the material produced before him by the*
B *chargor constitutes cause to the contrary.*

In this last respect, if he is satisfied, on a careful and an objective assessment of the factual material made available to him, that the chargor has shown cause to the contrary in the sense we have discussed earlier in this judgment, he will refuse an order for sale. On the other hand, if he finds as a matter of law that the allegations
C *raised by the chargor do not constitute cause to the contrary he will merely say so, giving his reasons, and grant the chargee's application.*

...

...

D *Now, it is trite that a chargee/creditor may pursue any or all remedies to recover monies lent by him. He may enforce his statutory charge against the chargor by wav of proceedings in rem under s. 256 of the Code. He may sue the principal debtor (who may or may not be the chargor) upon the personal covenant contained in any loan agreement that was entered into between the parties. He may proceed against the surety who has guaranteed the loan. And he may pursue all of these courses*
E *simultaneously, contemporaneously or successively. See, China and South Sea Bank Ltd v. Tan [1989] 3 All ER 839, 842.*

Thus, absent any special circumstances, a chargee who has obtained an order for sale is not barred by res judicata or any other form of estoppel from pursuing actions in personam against the chargor or the surety. The test of mutuality or reciprocity is,
F *accordingly, not met. Consequently, no legitimate ground may be advanced to bar the chargor from mounting an action in personam against the chargee eg, for breach of contract or for failure to furnish proper accounts.*

(emphasis added)

Appeals Against Judgment In Suit 183 Is Irrelevant

G **[28]** Before I deal with the defendant's assertion that there is in existence cause to the contrary to defeat this action for an order for sale, from the aforesaid extracts of the Supreme Court judgment of *Low Lee Lian* (*supra*), it is clear that the plaintiff may simultaneously pursue all remedies to recover monies lent by it. Thus, it follows that the plaintiff was correct when it
H asserts that Suit 183 and the appeals against the judgment it obtained in Suit 183 are irrelevant to this action. More so, as narrated above, when the defendant is not a party in Suit 183.

[29] It further follows that the application by the defendant to stay this action pending the disposal of the appeals against the judgment obtained in
I Suit 183 against the principal borrower and its guarantors, of which the defendant is not even a party, is without merit. In fact, with respect, for purposes of judicial management of time, it is in the interest of all relevant

parties to the MLA that this action be disposed of expeditiously so that any appeal against any decision made herein can be taken together with those appeals against the decision in Suit 183, if deemed fit by the Court of Appeal.

[30] In any event, at the risk being repetitive, the Supreme Court in *Low Lee Lian* (*supra*), had held that an application for an order for sale pursuant to s. 256 of the NLC, is meant to be speedy and summary in nature. I am first to be concerned with whether the plaintiff has given the appropriate statutory notices as stipulated in the NLC. Next, I must ensure that the procedural requirements prescribed by O. 83 of the ROC have been complied with. Next, I am to be concerned with the very narrow question whether the material produced before me by the defendant constitutes cause to the contrary.

[31] Adopting the procedure laid down by the Supreme Court, I now consider whether the material produced before me constitutes cause to the contrary within any of the three categories of cases laid down by *Low Lee Lian* (*supra*).

Contentions By The Parties

[32] The defendant had initially raised two procedural objections against the plaintiff's action for failure to comply with O. 7 r. 3 and O. 83 of the ROC read together with s. 256 of the NLC. The failure being the alleged omission by the plaintiff to give sufficient particulars to identify the cause of action (O. 7 r. 3 of the ROC) and the particulars of how the amount alleged to be due is made up (O. 83). However, during the course of presenting his oral submissions, these procedural objections were not pursued by learned counsel for the defendant.

[33] On the merits of the action, both parties cited and relied on *Low Lee Lian* (*supra*) but made disparate averments concluding that this case supports their respective positions.

[34] The plaintiff asserts that with the principal borrower having failed to effect payment of the loan, it is entitled to enforce the said charge. It has issued notices of demand and the statutory notice in Form 16D for sums lawfully due to it but the defendant has failed to comply. It has complied with the procedural requirements under O. 83 of the ROC by setting out the amount owing, and thus it ought to be granted an order for the sale of the said land with consequential reliefs to allow it to realise its security given by the defendant.

[35] The defendant, firstly asserts that the plaintiff has charged interest for a secured loan exceeding 12% per annum (encl. 6 para. 11.2). This is contrary to s. 17A(1) of the MLA 1951. When queried by me during the course of hearing on 23 April 2025 why such an assertion is made and to

A show the calculations, learned counsel for the defendant was not able to assist. Without the evidential basis to support such an assertion, no more need be said about this.

[36] As for the assertion that the defendant is not informed on how the amount owing is calculated, the defendant could have resorted to the B provisions of s. 19 of the MLA to seek the information. It is to be observed that pursuant to s. 19(3) of the MLA, if the lender defaults in supplying the information when sought, the lender is not entitled to sue for the amount due and interest shall not be chargeable during the period of default.

C **[37]** Secondly, the defendant asserts that, under the MLA, the plaintiff is not allowed to charge interest beyond what is statutorily provided. It can only charge simple interest on any unpaid sum at 8% per annum from day to day.

[38] Its main point is that the plaintiff can only impose interest at 10% per D annum on the principal sum of RM24,500,000 from 16 July 2021 until 16 December 2021. This comes up to RM1,026,986.30 and when this is added to the principal sum, the amount owing is RM25,526,986.30 (the "sum owing"). Thereafter, the plaintiff can only charge interest on the sum owing at 8% per annum on a day to day basis. Computed in this manner E until 15 March 2023, a period of 455 days, the interest comes to only RM2,545,704.94 and when added to the sum owing, it comes to only RM28,072,691.20 and not RM31,126,800.83 as demanded by the plaintiff. Thus, the demand by the plaintiff is erroneous (encl. 6 paras. 11.3 to 11.8).

[39] The plaintiff disagreed and maintained that it can continue to charge F interest on the principal sum at 10% per annum even after 16 December 2021 (encl. 8 para.11) and it has done so (encl. 12 para. 27). The plaintiff's director affirmed an affidavit to aver that the amount owing under the said charge has been taken from its books and records of the plaintiff kept in the ordinary course of business (encl. 8 paras. 16 and 17, encl. 18 paras. 6 to G 8, encl. 22 paras. 6 to 8, encl. 25 paras. 6 to 8). It added that its computation has found favour in Suit 183 with judgment entered in its favour (encl. 2 p. 83).

[40] Reliance was further placed by the plaintiff on cl. 22.1 of the MLA which provides that a statement duly signed by the director of the plaintiff H shall be final and conclusive as to the amount due and owing from the defendant under the said charge and as to the rates of interest charged or to become payable thereon in any legal proceeding commenced under the said charge. The Federal Court case of *Cempaka Finance Bhd v. Ho Lai Ying & Anor* [2006] 3 CLJ 544 was cited in support of this assertion.

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[41] Further reliance was placed by the plaintiff on the following cases for the principle that in foreclosure proceedings, challenges on the calculation of interest under the loan agreement are not relevant and reliance can be made on the latest statement of accounts of the plaintiff. See:

(i) *Jigarlal K Doshi v. Resolution Alliance Sdn Bhd & Another Appeal* [2012] CLJU 811; [2012] 1 LNS 811 held (2);

(ii) *Hap Seng Credit Sdn Bhd v Rentak Arena (M) Sdn Bhd* [2017] CLJU 1; [2017] 1 LNS 1; [2017] 9 MLJ 169 held (1); and

(iii) *CIMB Islamic Bank Berhad v. David Chua Kok Tee* [2022] CLJU 618; [2022] 1 LNS 618 para. 21.

Court's Analysis And Findings

[42] The preamble to the MLA 1951 states that it is an Act for the regulation and control of the business of moneylending, the protection of borrowers of the monies lent in the course of such business, and matters connected therewith.

[43] The MLA 1951 is, thus, a special and specific Act of Parliament to regulate and control the business of moneylending not only for the protection of borrowers but also matters connected therewith. It contains six parts with Part V containing specific provisions on the conduct of moneylending business including a specific provision housed in s. 17 which makes it illegal for any moneylending agreement to provide directly or indirectly for the payment of compound interest. In my considered view, the phrase "matters connected therewith" is wide enough to cover the dispute in this action on the calculation of interest payable under the said charge created in favour of the plaintiff to secure a moneylending loan in this action.

[44] The provisions of s. 17(1) of the MLA 1951 provides the answer to the dispute in this case on how interest on the unpaid sum is to be calculated. It is reproduced below:

> (1) *Any moneylending agreement made on or after the commencement of this Act, for the loan of money by a licensee shall be illegal in so far as it provides, directly or indirectly*, for the payment of compound interest, or *for the rate or amount of interest to be increased by reason of any default in the payment of sums due under the moneylending agreement*:
>
> > *Provided* that provision may be made in any such moneylending agreement that if default is made in the payment upon the due date of any sum or instalment payable to the licensee under the moneylending agreement, whether in respect of principal or interest, *the licensee shall be entitled to charge simple interest on the unpaid sum or instalment which shall be calculated at the rate of eight per centum per annum from day to day from the date of default in payment of the sum or instalment until that sum or instalment is paid, and any interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan.*

A

(2) This section shall not apply to transactions known as Thavannai transactions, between one licensee and another licensee, provided that any such transaction is evidenced by a written document duly stamped.

(emphasis added)

B **[45]** The proviso to s. 17(1) of the MLA 1951 above makes it clear that the plaintiff shall be entitled to charge 8% per annum on the unpaid sum or instalment, *ie*, the sum owing, which in this case, as at 16 December 2021 is RM25,526,986.30 which includes the interest at 10% per annum on the principal sum of RM24,500,000 from 16 July 2021 until 16 December 2021 C amounting to RM1,026,986.30. Even though this will amount to interest on interest, *ie*, compound interest, this is expressly permitted by the last part of the proviso which provides that any interest so charged shall not be reckoned for the purposes of the MLA as part of the interest charged in respect of the loan. In other words, this portion of the interest charged up to the end of the five months tenure, *ie*, up to 16 December 2021 is capitalised.

D **[46]** Clause 2 of the *MLA* (*supra*) itself provides that the lender, who is the plaintiff, shall be entitled to charge simple interest at the rate of 8% per annum on the unpaid sum of instalment. The unpaid sum instalment has to be the principal sum of RM24,500,000 plus the interest thereon at 10% per E annum for the period of 16 July 2021 until 16 December 2021 payable in one single instalment. Thus, cl. 2 of the MLA is has been crafted premised on s. 17(1) of the MLA 1951. It has to, so as to comply with the law

[47] Clause 2 of the said MLA read together with s. 17(1) of the MLA 1951, makes it clear that the cut-off date for the imposition of the interest F at 10% per annum on the principal sum or loan with a tenure of five months, is 16 December 2021. However, in contravention of the explicit provision of s. 17(1) of the MLA 1951, and cl. 2 of the MLA, the plaintiff continued to charge interest at 10% per annum on the principal sum after 16 December 2021 and continuing. That this is how the plaintiff has calculated and G demanded payment from the defendant is made clear by the table presented in the plaintiff's written submissions (encl. 12 para. 27) and which is reproduced below. I disagree with the plaintiff that it is entitled to levy interest as tabulated below.

H

Date	Days Elapsed	Interest of 10% per annum on principal sum	Interest of 8% on the arrears	Sums in arrears
15.12.2021	153 (16.07.2021-15.12.2021)	$RM24,500,000.00 \times \frac{10}{100} \times \frac{153}{365} = RM1,026,986.30$	-	**RM25,526,986.30**
23.05.2023	524 (16.12.2021-23.05.2023)	$RM24,500,000.00 \times \frac{10}{100} \times \frac{524}{365} = RM3,517,260.28$	$RM25,526,986.30 \times \frac{8}{100} \times \frac{524}{365} = RM2,931,756.89$	**RM31,776,003.47 (after taking into account part payment of RM200,000.00)**

I

[48] Learned counsel for the plaintiff had made available a copy of the grounds of judgment of the High Court in Suit 183 (encl. 16 pp. 29 to 40) which interpreted s. 17(1) of the MLA 1951 and cl. 2 in a manner allowing the plaintiff to continue to charge interest at 10% on the principal sum even after the five months' tenure of the loan. The reason given is that, if not, the principal borrower would be put in a better position as it only has to pay 8% per annum resulting in a 2 % per annum reduction. The High Court in Suit 183 allowed interest to be charged on the principal sum at 10% per annum until full realisation plus another 8% per annum default interest to be charged on the sum owing (encl. 2 p 83).

[49] With the greatest of respect, for the reasons I have narrated above, I disagree. I add that firstly, the provisions of the statutory formula for the computation of interest is clearly provided in s. 17(1) of the MLA 1951 and it has to be complied with. Secondly, the interest of 10% for the five months earned by the plaintiff has been capitalised, and the default interest of 8% per annum accrues on the increased sum owing. Thirdly, to allow the 10% per annum interest to continue to accrue plus a default interest of 8% per annum being levied will result in the defendant being charged interest in excess of what the plaintiff is entitled to in contravention of the statutory formula provided in s. 17(1) of the MLA. Lastly, but by no means the least, in my considered view, the MLA 1951 is a socially beneficent piece of legislation to keep in check usury and if there is any ambiguity in the construction of s. 17(1) of the MLA 1951, it has to be construed in favour of the borrowers and by extension the defendant who has given a security for the loan taken by the principal borrower, in keeping with the preamble of the MLA. To put it another way, to protect those the MLA is meant to protect.

[50] With respect, reliance by the plaintiff on the conclusive evidence cl. 22.1 of its MLA, and the Federal Court authority of *Cempaka Finance Bhd* (*supra*) is misplaced and without merit for the following reasons:

(i) *Cempaka Finance Bhd* was not dealing with a loan granted under the MLA 1951 which specifically prohibits the imposition of interest in excess of what is statutorily provided for;

(ii) the Federal Court in *Cempaka Finance Bhd* was not called upon to construe the statutory formula for the computation interest under the MLA 1951, as provided for in s. 17(1) of the MLA 1951;

(iii) instead, *Cempaka Finance Bhd*, assists the defendant, as the Federal Court there held that a conclusive evidence clause operates in the field of adjectival law and subject to manifest error, it excuses the plaintiff from adducing proof of debt and shifts the burden onto the defendant to disprove the amount claimed (*ibid* at paras. 6 and 7), and in this case, there is manifest error in the computation of the amount owing; and

A (iv) not only is there manifest error in the instant case, the computation is one made in contravention of a substantive statutory provision of the MLA 1951 namely s. 17(1) thereof, and it is well settled that even courts of unlimited jurisdiction have no authority to act in contravention of written law, see *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian*
B *Finance Bhd* [1998] 2 CLJ 75 as per Gopal Sri Ram JCA (later FCJ) at pp. 112, paras f to h and 113, paras a to g.

[51] For the same reasons, reliance by the plaintiff on the authorities of *Jigarlal K Doshi* (*supra*), *Hap Seng Credit Sdn Bhd* (*supra*) and *CIMB Islamic Bank Bhd* (*supra*) are misconceived. I would add the following reasons:

C (i) in *Jigarlal K Doshi*, the challenge by the chargor was not on the computation of the amount owing, but the delay in enforcing the charge some 15 years after default in the repayment of the loan, and it was held that, limitation only accrues from the date of the issuance of the Form 16D. However, this principle in *Jigarlal Doshi* has since been
D disapproved and overruled by *Thameez Nisha Hasseem v. Maybank Allied Bank Bhd* [2023] 5 CLJ 874 para. 111. Counsel would do well to ensure that in the discharge of their duty to the court, they cite cases which sets out the current law;

E (ii) in any event, the Court of Appeal in *Jigarlal K Doshi* had followed *Low Lee Lian*, as it is obliged to under the doctrine of *stare decisis*, on the restrictive categories of cause to the contrary;

(iii) whilst *Hap Seng Credit Sdn Bhd* involved the enforcement of a charge premised upon a moneylending agreement, the High Court held
F (*ibid* paras. 33 to 36) that the defendant did not produce any evidence or proof to support its contention that the plaintiff had imposed excessive interest in breach of s. 17(1) of the MLA 1951 unlike the instant case. Whilst reference is made to *Jigarlal K Doshi* in *Hap Seng Credit Sdn Bh*d, I observed that such reference was made at a time when
G *Thameez Nisha Hasseem* has yet to be decided by the Federal Court; and

(iv) *CIMB Islamic Bank Bhd* did not deal with the enforcement of a charge action grounded on any breaches of the MLA 1951, and the High Court, in any event, held that the defendant was not able to prove any manifest error in the plaintiff's latest statement of account (*ibid* at para. 24). This
H would lead to the irresistible conclusion that if manifest error had been proven like in the instance case, the High Court would have found cause to the contrary as to defeat the application for an order for sale.

I

Novelty Of Argument

[52] In *Hap Seng Credit Sdn Bhd*, the provisions of s. 17(1) of the MLA 1951 was raised for consideration by Abu Bakar Jais J (now FCJ), but the defendant was not able to produce evidence that there was imposition of excessive interest and thus, the invocation of s. 17(1) of the MLA 1951 in the instant case, is novel only to the extent that the defendant here has succeeded.

Existence Of Cause To The Contrary

[53] It follows that the defendant has proved that to grant an order for sale would be contrary to some rule of law namely the MLA 1951, and in particular, s. 17(1) of the MLA 1951 which amounts to cause to the contrary under s. 256(3) of the NLC. By computing interest in the manner it had, in law, the defendant has proved there is in existence cause to the contrary under two of the three categories laid down in *Low Lee Lian*, namely: (i) that the statutory demand in Form 16D demands sums not lawfully due from the chargee; and (ii) to grant an order for sale would be contrary to some rule of law namely the MLA 1951, and in particular, s. 17(1) of the MLA 1951.

[54] Wherefore, encl. 1 is dismissed with costs with liberty to the plaintiff to apply afresh premised upon the computation of the amount owing in compliance with the provisions of the MLA 1951.

[55] Upon delivery of my decision to dismiss encl. 1, learned counsel for the defendant conceded that encl. 5 has thus been rendered academic and sought leave for it to be withdrawn. I had accordingly struck out encl. 5.

Costs

[56] Learned counsel for the defendant sought a sum of RM15,000 for costs with learned counsel offering a sum of RM3,000. Taking into account that encl. 5. was in my considered view, unnecessary and had taken up needless time, that the subject matter involves the interpretation of a statutory formula on the computation of interest under the MLA 1951 which will have an important bearing on the amount owing which can be substantial, and with written submissions and oral submissions having been presented, I awarded a sum of RM12,000 subject to allocatur to be paid by the plaintiff to the defendant.

[57] Finally, I thank learned counsel for both the plaintiff and defendant for the submissions presented both in writing and orally and for the reasons given, I am of the view that the other authorities cited by them need not be considered.